IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

WP(C).No. 29973 of 2006(R)

PETITIONER:

B.GEETHABHAI, W/O.LATE
K.PRABHAKARAN, KONNOTHTHARA HOUSE,
KALAVAMKODAM P.O., CHERTHALA,
ALAPPUZHA-688 586.

BY ADV. SRI.K.RAVEENDRAN
SRI.ANIL KUMAR M.SIVARAMAN

RESPONDENTS:

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1. THE SECRETARY, VAYALAR GRAMA PANCHAYAT
VAYALAR.

2. THE DRUGS CONTROLLER,
OFFICE OF THE DRUGS CONTROLLER,
THIRUVANANTHAPURAM.

3. THE ASSISTANT DRUGS CONTROLLER,
OFFICE OF THE ASSISTANT DRUGS CONTROLLER,
ERNAKULAM, KAKKANAD, COCHIN-30.

4. THE TAHSILDAR, TALUK OFFICE,
CHERTHALA, ALAPPUZHA DISTRICT.

5. SASIKALA.K.N., RED STAR HOUSE,
KALAVAMKODAM P.O., CHERTHALA, ALAPPUZHA
DISTRICT.

R1 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.PETER JOSE CHRISTO
R2, R3 & R4 BY SR.GOVERNMENT PLEADER SRI.MATHEW G.VADAKKEL
R5 BY ADV.SRI.P.V.GEORGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/12/2006, ALONG WITH WPC NO. 22126 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.22126 & 29973 OF 2006

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DATED THIS THE 1ST DECEMBER, 2006

J U D G M E N T

The petitioners in both these cases claim to be the legally wedded wives of one K.Prabhakaran who was the proprietor of Thejus Pharmaceuticals, Kalavamkodam, Cherthala. The petitioner in W.P.(C)No.22126 of 2006 has arrayed the petitioner in W.P.(C)No.29973 of 2006 as the 3rd respondent and would describe the 3rd respondent as a member of the staff of Thejus Pharmaceuticals. The petitioner in W.P.(C)No.29973 of 2006, who has arrayed the petitioner in the other Writ Petition as the 5th respondent, while conceding that the 5th respondent was another woman in the life of late Sri.Prabhakaran, would rely on Ext.P2 Will to contend that all the movables, machinery and stock-in-trade and even the drug licence, apart from the premises of Thejus Pharmaceuticals have become vested upon her due to the demise of the testator Sri.Prabhakaran.

2. The prayers in W.P.(C)No.22126 of 2006 are the following:-

1. cancel the licence issued to K.Prabhakaran for Thejus Pharmaceuticals;

2. declare that the petitioner and her children are

not responsible for the drugs manufactured by respondents 3 and 4 unauthorisedly in Thejus Pharmaceuticals.

The prayers in W.P.(C)No.29973 of 2006 are the following:-

1. command the 1st respondent, the Secretary, Vayalar Grama Panchayat to issue ownership certificate in respect of the factory building and receive property tax in respect of the building from the petitioner and to complete mutation proceedings in respect of the land on which the factory is situate;

2. direct the respondents 2 and 3, the Drugs Controller and the Assistant Drugs Controller to issue drug licence in respect of the premises in question by acting upon the Will and also taking into account the physical control the petitioner is having over the factory premises.

Exception is taken in W.P.(C)No.29973 of 2006 even to the address shown by the petitioner in W.P.(C)No.22126 of 2006.

3. I have heard the submissions of Sri.P.V.George, counsel for the petitioner in W.P.(C)No.22126 of 2006, Sri.K.Raveendran, counsel for the petitioner in W.P.(C)No.29973 of 2006 and also those of Sri.Mathew G.Vadakkel, learned Government Pleader for the official respondents. Even though the Panchayat has entered appearance

through counsel, they have not filed any counter affidavit or even a statement.

4. Serious issues were raised before me by learned counsel, particularly Sri.Raveendran and Sri.George, as to what exactly was the nature of the relationship between their respective clients and deceased Prabhakaran. The genuineness of the Will relied on by Smt.Geetha Bhai, petitioner in W.P.(C)No.29973 of 2006 was also challenged seriously by Sri.P.V.George. This Court sitting in jurisdiction under Article 226 of the Constitution of India will not be in a position to settle such disputes. This Court however will observe that prima facie it appears that Smt.Geetha Bhai was the last woman in the life of Mr.Prabhakaran and was having actual physical control of the movables, machineries, stock-in-trade and the premises where Thejus Pharmaceuticals is situate. A scrutiny of the averments in Writ Petition No.22126 of 2006 and also the prayers made therein will reveal that the petitioner in that case is opposed to the very idea of Thejus Pharmaceuticals continuing to function. Even though Sri.George submitted that the drug licence has ceased to exist the moment the original licensee Prabhakaran died, I notice that the first prayer is that the licence be cancelled. The second prayer is made in the context of the averment that even without a licence drugs are

being manufactured in Thejus Pharmaceuticals by Smt.Geetha Bhai. As for the second prayer, in view of the stand taken by the parties in these cases, I do not find any difficulty to grant the same. It is declared that the petitioner in W.P.(C)No.22126 of 2006 or her children will not be held responsible by any authority on account of the drugs which are manufactured in Thejus Pharmaceuticals.

5. The first prayer in W.P.(C)No.22126 of 2006 is not one which can be granted straightaway. Ext.P5 application (in W.P.(C)No.29973 of 2006) has been submitted by Smt.Geetha Bhai for grant/renewal of licence for manufacture and sale of Ayurvedic/Siddha or Unani Drugs. The application has been submitted before the 3rd respondent. The learned Government Pleader, on the basis of instructions received from the 3rd respondent, submits that the 3rd respondent is not the authority to pass orders on that application. The 2nd respondent-Drugs Controller (in W.P.(C)No.29973 of 2006), Thiruvananthapuram is the authority to pass orders. Even though prayer No.1 in W.P.(C) No.29973 of 2006 seeks issuance of ownership certificate and also completion of mutation proceedings in respect of the premises of Thejus Pharmaceuticals, no materials have been placed in this case to show that necessary applications in that regard have been filed by the petitioner before the Panchayat. But the second prayer which is for a

direction regarding issuance of drug licence in respect of the premises bequeathed in favour of Smt.Geetha Bhai under the Will, according to me, merits consideration. As already indicated by me, though this Court is not pronouncing on the genuineness of the Will, the materials presently available on record will show that having been the last woman in the life of Mr.Prabhakaran, it was Smt.Geetha Bhai who is presently having physical control of the premises where Thejus Pharmaceuticals was being conducted by Mr.Prabhakaran. Placing reliance on the Will in question, at least to the extent of holding that Smt.Geetha Bhai is presently in physical control of the premises of Thejus Pharmaceuticals, will be justified.

6. Under these circumstances, W.P.(C)No.22126 of 2006 will stand allowed to the extent of declaring that the petitioner therein and her children will not be held responsible for the drugs manufactured in Thejus Pharmaceuticals. W.P(C)No.29973 of 2006 will stand disposed of directing the 3rd respondent-Assistant Drugs Controller to forward Ext.P5 application together with the reports on inspection of the premises conducted by him and Ext.P2 Will to the 2nd respondent for immediate action on Ext.P5. The 2nd respondent will rely on Ext.P2 Will for the purpose of holding that it is Smt.Geetha Bhai, the petitioner in W.P.(C)No.29973 of 2006 who is presently having

physical control over the entire movables, machineries and stock-in-trade and also the premises upon which Thejus Pharmaceuticals used to be conducted by late Prabhakaran. Order will be passed on the application (submitted by Smt.Geetha Bhai) by the 2nd respondent without delay and at any rate within two weeks of receiving the papers forwarded to him by the 3rd respondent-Assistant Drugs Controller. I make it clear that I have not expressed any opinion either regarding the genuineness of Ext.P2 Will or regarding the legal nature of the relationship between the petitioners in both these cases and late Prabhakaran.

(PIUS C. KURIAKOSE, JUDGE)

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